



Amended and Restated Revenue Sharing and Service Agreement

Catawba County Sheriff's Office

This Amended and Restated Revenue Sharing and Service Agreement (this “**Agreement**”), made and entered into as of this _1st_ day of October 2017 (the “**Effective Date**”), between Catawba County Sheriff’s Office (the “**County**”) and HomeWAV, LLC, a Virginia limited liability company (“**HomeWAV**”).

RECITALS

Whereas, the County and HomeWAV are parties to that certain Revenue Sharing and Service Agreement, dated October 1st, 2012 (the “**Existing Agreement**”), pursuant to which HomeWAV provided an inmate video visitation system to the County;

Whereas, the County and HomeWAV desire to amend and restate the Existing Agreement to provide, among other terms and conditions, that the County will lease certain equipment, as set forth on Exhibit A hereto (the “**Equipment**”), from HomeWAV and will use that Equipment to operate HomeWAV’s proprietary and patented software program (the “**Software**” and, together with the Equipment, the “**System**”) and certain other permitted uses, as set forth on Exhibit B attached hereto (the “**Other Permitted Uses**”);

Whereas, the System will be installed and operated in the County’s detention facilities hereto (each, a “**Facility**” and collectively, the “**Facilities**”) and will provide inmate video visitation over the Internet; and

Whereas, HomeWAV will deliver the Equipment and provide the County with a limited license to use the Software, and the County will accept the Equipment and make use of the Software and the System, in each case, pursuant to the terms and subject to the conditions set forth herein.

Now, therefore, in consideration of the mutual covenants and promises contained herein, the parties, desiring to be contractually bound, agree as follows:

1. **Lease; Exclusivity.** HomeWAV hereby agrees to lease to the County, and the County hereby agrees to accept a lease from HomeWAV, the Equipment. For the duration of this Agreement (which includes any extensions hereto), the County agrees to use HomeWAV as the exclusive provider of video visitation systems for the Facilities and agrees not to use, purchase, lease or accept any software, equipment or system similar to the Software, the Equipment or the System for use at any Facility.

2. **Equipment Removal and Existing Agreement.** The County hereby assigns all of its rights, title and interest to all equipment and software provided by HomeWAV in connection with the Existing Agreement, and HomeWAV hereby agrees to arrange for the removal of such equipment and software from the Facility, at no cost to the County. The system usage fees charged and the revenues to be paid relating to the system usage fees charged prior to the first day of the first month immediately following the Effective Date shall be calculated pursuant to the terms and subject to the conditions of the Existing Agreement.



3. **Term of this Agreement.** This Agreement shall terminate October 1st, 2022 unless terminated earlier pursuant to Section 16; provided, however, that this Agreement shall automatically extend for additional terms of one (1) year unless either party notifies the other party of its desire to terminate this Agreement no later than 60 days prior to the end of the then-current term.

4. **No Charge.** HomeWAV will: (i) arrange for the delivery of the Equipment to the Facilities, (ii) load the Software onto the Equipment, (iii) coordinate the installation of the Equipment in designated wall mount locations within the Facilities, (iv) provide reasonable authorization and assistance to permit the use of the Equipment in connection with the Other Permitted Use and (v) provide updated staff training on administrative platform features and functionality, all at no charge to the County.

5. **No Charge for Service and Maintenance.** HomeWAV will service and maintain the Equipment in each Facility pursuant to HomeWAV's Software and Hardware Service Level Agreement, to be entered into between HomeWAV and the County contemporaneously with the execution this Agreement and may be amended as may be mutually agreed to by the parties thereto (the "**Service Agreement**"), which shall automatically terminate upon termination of this Agreement; provided that HomeWAV shall not service or maintain the Equipment to the extent any damage occurred as a result of misuse, neglect or any breach of this Agreement, in each case, by any person other than HomeWAV or its employees, agents, representatives or subcontractors.

6. **Title to the Equipment.** HomeWAV shall retain title to the Equipment and the System. The County agrees to execute any such additional instruments and to permit any filing or recordation as may be requested by HomeWAV to indicate ownership of the Equipment. The County will not, and will not permit any other person to, remove, alter, disfigure or cover up any numbering, lettering, insignia or any owner's tag(s) displayed upon the Equipment.

7. **License for Use of System.** HomeWAV hereby grants to the County a non-assignable and nonexclusive license to use the Software for the limited purpose of providing Internet video visitation to inmates in each Facility and to view or monitor the records of such visitations, in each case in accordance with the Software's End User Licensing Agreement and Terms of Use and Privacy Policy, as each is set forth in the Software, as such items may be updated, amended and modified in accordance with their respective terms (collectively, the "**Software Terms and Conditions**"), and pursuant to the terms and subject to the conditions of this Agreement. The County shall have no right to sublicense the Software and may not copy or modify the Software, or any adaptation, transcription or merged portion thereof, except as expressly authorized in writing by HomeWAV. Any modifications, improvement or alterations to the Software, whether authorized or not, made by the County or any third party shall be the sole and exclusive property of HomeWAV, and the County hereby assigns all of its right, title and interest in and to such modifications, improvements or alterations to HomeWAV. For the avoidance of doubt, this license shall expire immediately upon the termination of this Agreement.

8. **The County's Agreements.**

- a. The County covenants that it will not sublease or assign the Equipment, the Software or the System.



- b. The County agrees that the County shall keep the Equipment free and clear of all liens and encumbrances.
- c. The County hereby agrees to use the Equipment for limited purposes of use of the Software and the Other Permitted Uses, in each case, at the Facilities and pursuant to the terms and subject to the conditions of this Agreement.
- d. The County agrees to use its best efforts to ensure that none of the Equipment or Software is damaged by misuse or neglect, including, without limitation, by misuse by the inmates.
- e. The County will work with HomeWAV to ensure that all users of the System will agree to the Software Terms and Conditions.
- f. The County will not move the Equipment without the advance written consent of HomeWAV.
- g. The County will not remove, alter, disfigure or cover up any numbering, lettering, insignia or any owner's tag(s) displayed upon the Equipment.

9. **Use of the System.** Subject to lock-downs, suspension of inmate privileges, and other temporary interruptions, the County will allow inmate visitation on the System during the same hours when inmates are allowed to use the applicable Facility's inmate phone systems.

10. **Access to the Facility.** The County will grant HomeWAV and its subcontractors reasonable access to the Facilities in connection with HomeWAV's rights and obligations hereunder and under the Service Agreement. HomeWAV shall have the right, upon reasonable notice, to enter into each Facility to inspect the System.

11. **System Usage Fee.** The video visitors to each Facility's inmates shall be charged a fee at the rate of twenty-five cents (\$.25) per minute to take part in video visitations using the System and fifty cents (\$.50) per video message, or such other prices as may be agreed to by the County and HomeWAV (such amounts, the "Usage Fees"). Revenues from video visitation using the System to visit with inmates in the Facilities shall be deposited into a dedicated account established and maintained by HomeWAV through PayPal, or another equivalent third-party ecommerce vendor, and HomeWAV is authorized to disburse such funds in accordance with Section 14. HomeWAV reserves the right to change the Usage Fees, upon 30 days' notice from HomeWAV, as a result of any one or combination of the following: (a) inflation, (b) a change in taxes, (c) a change in inmate phone rates or (d) any rule, regulation, or other action by any government or regulatory entity resulting in increased costs to HomeWAV.

12. **Free Onsite Visitation.** The County may allow its inmates to initiate a maximum of one 15 minute video visit per week with a visitor, using one of the visitation stations to be located in the Facility's visitors' lobby, without charge, Monday through Friday ("Free Visitation"). An inmate's use, or an inmate's visitor's use, of Free Visitation will have no effect on the amount of paid video visitation allowed to an inmate or an inmate's visitor. Further, an inmate's visitor's use of the System to conduct paid video visitation will have no effect on that inmate's visitor's ability to also take part in Free Visitation. Confidential visits within the Facility will be Free Visitation and are not subject to time limits. Approved professional visitors, aside from Catawba County employees, will still be charged for video visits initiated outside of the Facility.



13. **Revenue Sharing.** Revenues from the Usage Fees from the Facilities will be shared between HomeWAV and the County such that HomeWAV will retain 70% of such amounts for consideration of its obligations hereunder and consideration and the County will receive 30% of such amounts to offset a portion of the County's cost to monitor video visits using the System and to operate the System in the Facilities; provided, however, that all sales tax and, to the extent that not used to increase the Usage Fees, any fees, penalties or other costs or expenses resulting from any new rule, regulation, or other action by any government or regulatory shall be subtracted from the calculation of total revenues. HomeWAV shall pay to the County, on a monthly basis, its share of the revenues not later than the 10th of following month.

14. **Call Monitoring.** HomeWAV will endeavor to permit the County to monitor the video messages and video calls in accordance with HomeWAV's practices. The County hereby agrees that HomeWAV shall have no obligation to review or monitor the contents of any video call or video message made or received using the Software or the System and shall have no obligation to notify the County in connection with any use or misuse of the Software or the System or any video call or video message made or received on the System. The County hereby agrees that HomeWAV shall have no obligation to verify the users of the Software and the System and shall not be liable for any use of the Software that is in violation of the Software Terms and Conditions. HomeWAV will endeavor to make certain video recordings available to the County on demand for a period of not less than 90 days after the date of such recording and, with advanced written notice, until 90 days after termination of this Agreement. The County agrees that HomeWAV has no liability to the County or any third party for any failure to record, store, transmit, relay, review or monitor any video message.

15. **Financial Reporting Requirements.** HomeWAV shall maintain an accounting program that accurately reflects the revenues generated by the System in the Facilities, and provide that information to the County monthly during the term of this Agreement. HomeWAV shall retain its share of the revenues as payment for its obligations hereunder, and shall remit the County's share of revenues, along with such monthly financial reports, to the County. HomeWAV shall issue video visitation call data, revenue, and expense information by the 10th day of each month with respect to video visitation activity that occurred in the Facilities during the preceding month. HomeWAV shall maintain all books, documents, accounting records and other evidence pertaining to the services and payments under this Agreement and make such materials available for inspection at all reasonable times during the term of this Agreement, and for three (3) years after the date of the final payment under the Agreement.

16. **Termination.** The County may terminate this Agreement if HomeWAV breaches Section 4, 5, 6, 13 or 15 and such breach remains unremedied thirty (30) days after notice thereof. HomeWAV may terminate this Agreement if the County breaches Section 1, 2, 5, 6, 7, 8, 9, 10, or 11 and such breach remains unremedied thirty (30) days after notice thereof. This Agreement shall automatically terminate upon the end of the term, as such term may be extended pursuant to Section 3. Sections 11, 13, 15, 16, 17, 18, 20, 21, 22, 23, 25 and 27-32 shall survive termination of this Agreement. In the event that the Additional Consideration has not paid to or retained by HomeWAV prior to termination of this Agreement (excluding any termination by the County pursuant to the first sentence of this Section), then the County shall owe HomeWAV any amount of Additional Consideration not previously paid to or retained by HomeWAV.



17. **Return of the Equipment.** The County shall return the System to HomeWAV in good, working condition promptly following termination or expiration of this Agreement, but in no event later than (30) days following such termination or expiration. In the event that any Equipment is not in good, working condition or any Equipment is not returned pursuant to this Section, the County shall be liable for the replacement cost of such Equipment, which amount shall be payable on HomeWAV's demand.

18. **Agreement Documents.** The attached Exhibit A, describing the Equipment and attached Exhibit B describing the Other Permitted Uses, the Service Agreement and the Software Terms and Conditions are each made part of this Agreement and are each incorporated herein by this reference. This Agreement represents the entire agreement and understanding between HomeWAV and the County with respect to the subject matter hereof, and supersedes any other agreement or understanding, written or oral, that the parties hereto may have had with respect thereto. No statements, representations, promises or inducements with respect to the subject matter by either party or by any agent or representative of either party which is not contained in this Agreement shall be valid or binding between the parties.

19. **Force Majeure.** To the extent allowable by law, any delays or failures by either party hereto in the performance of the obligations hereunder shall be excused if and to the extent such delays or failures are caused by occurrences beyond such party's control (a "**Force Majeure**"), including, without limitation, acts of God, strikes or other labor disturbances, war, whether declared or not, sabotage, failure of the Internet, or any part or element thereof and/or any other cause or causes, whether similar or dissimilar to those herein specified, which cannot reasonably be controlled by such party.

20. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by the laws of the State of North Carolina, both as to interpretation and performance.

21. **Independent Contractor.** HomeWAV acknowledges that HomeWAV and its employees serve as independent contractors and that the County shall not be in any manner responsible for any payment, insurance, or incurred liability. Nothing in this Agreement will create an employer-employee relationship, association, joint venture, partnership, or other form of legal entity or business enterprise between the parties, their agents, employees or affiliates.

22. **Subcontractors.** HomeWAV shall have the right to use subcontractors to perform its obligations and exercise its right hereunder and under the Service Agreement. HomeWAV shall be liable for all acts and omissions of its subcontractors as if such acts or omissions were performed by HomeWAV.

23. **Notices.** All notices under this Agreement must be in writing and must be given by either party by prepaid mail, overnight courier service, or hand delivery to the other party as set forth below. Either party may change its address and/or addressee for notices at any time with fifteen (15) days' prior notice to the other party in accordance with the foregoing.

HomeWAV:

HomeWAV, LLC
11100 Linpage Place
Suite 200
St. Louis, MO 63132



County: Catawba County Sheriff's Office
 P.O. Box 385
 Newton, NC 28658

24. Nondiscrimination and Non-Conflict Statements. HomeWAV agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin, shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement, or in the employment practices of HomeWAV. HomeWAV shall upon request show proof of such non-discrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination.

25. Warranty Disclaimer. THE SYSTEM, THE SOFTWARE, THE EQUIPMENT AND SERVICES DELIVERED PURSUANT TO THIS AGREEMENT AND THE SERVICE AGREEMENT ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE BUT EXCLUDING ALL WARRANTIES EXPRESSLY PROVIDED IN THE SERVICE AGREEMENT. HOMEWAV DOES NOT WARRANT THAT THE SOFTWARE WILL RUN PROPERLY ON THE EQUIPMENT OR ANY OTHER HARDWARE, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR COMPLETELY ERROR FREE, OR THAT ALL SOFTWARE ERRORS OR DEFECTS WILL BE CORRECTED.

26. Compliance with all Federal, State, and Municipal Laws. HomeWAV is familiar with, and agrees to observe and comply with, all applicable federal, state, and local laws, statutes, ordinances, and regulations in any manner affecting the provision of inmate video communication, and shall ensure that its third-party subcontract installers, if applicable, obtain any necessary permits prior to installation of the Equipment in the Facilities.

27. Assignment. No party hereto may assign this Agreement or any or all any of its rights or obligations hereunder without the prior written consent of the other party; provided, however, that HomeWAV may assign this Agreement to any of its subsidiaries or affiliates or to any entity that acquires all or substantially all of HomeWAV's assets and agrees to assume responsibility hereunder. None of the provisions of this Agreement shall be construed to be for the benefit of or enforceable by any person or entity other than the parties hereto and their successors and assigns.

28. Indemnification and Setoff. To the extent limited and in accordance with Washington law, each party agrees to defend, indemnify and hold harmless the other party, their officers, employees and agents from and against all liability claims, actions, damages, losses and expenses, including reasonable attorney's fees, which arises out of any negligent or will full act or omission by such party, or breach of any obligation of the party under this Agreement. HomeWAV may, without notice to the County, set off or recoup any liability it owes to the County against any liability for which HomeWAV determines the County is liable to HomeWAV, whether either liability is matured or unmatured or is liquidated or unliquidated.

29. Severability. If any provision of this Agreement is declared illegal, void, or unenforceable the remaining provisions shall not be affected but shall remain in force and in effect.



30. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original hereof and all of which, when taken together, will be deemed to constitute one and the same agreement. Signatures transmitted by facsimile or other electronic means will be deemed originals.

31. **Authorization; Third Party Beneficiaries.** Each person signing below warrants and represents that he/she has full power and authority to execute this Agreement on behalf of the party he/she represents. There are no third-party beneficiaries to this Agreement.

(signature page follows)



In witness whereof, the parties hereto have caused this Agreement to be executed on the day and year first above written, to be effective as of the Effective Date.

HomeWAV, LLC

DocuSigned by:
By: 
Name: John Best
Title: President

Catawba County Sheriff's Office

DocuSigned by:
By: 
Name: Coy Reid
Title: Catawba County Sheriff



EXHIBIT A

The Equipment

- Twenty-four (24) - 16" HomePAS™ Kiosks
- One (1) – Mobile 16" HomePAS™ Kiosks



EXHIBIT B

Other Permitted Uses

- Option: Casemaker Law Library Service
 - To be deducted from the County's monthly revenue share

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year above first written.

Catawba County Authorized Official

DEPT_DATE

DEPT_SIGNATURE

DEPT_TITLE

Date

Department Head

Authorized Official

VEND_DATE

VEND_SIGNATURE

VEND_TITLE

Date

Name/Title

THIS INSTRUMENT has been preaudited in the manner required by the Local Government Budget and Fiscal Control act as amended.

CFO_DATE

11/7/2017

CFO_SIGNATURE CFO_TITLE

DocuSigned by:

Robert Miracle

CF0D2028C1164C8...

Date

Robert Miracle, Chief Financial Officer

AS TO FORM:

ATTY_DATE

11/6/2017

ATTY_SIGNATURE

ATTY_TITLE

DocuSigned by:

Debra Bechtel

74313C294A5D46F...

Date

Debra Bechtel, County Attorney